

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. OR MC 21146.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Claim -- Mining Claims: Abandonment

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of mining claims located before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of assessment work on the claims with BLM by Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. Pursuant to 43 CFR 3833.0-5(m), a proof of labor or notice of intention to hold will be deemed as timely filed if it is mailed in an envelope bearing a clearly dated postmark affixed by the United States Postal Service prior to Dec. 31, the period prescribed by law, and is delivered to the proper BLM office by Jan. 19 immediately following.

APPEARANCES: Arthur A. Tooze, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Arthur A. Tooze appeals the Oregon State Office, Bureau of Land Management (BLM), decision of March 15, 1983, which declared the unpatented Blue Bird lode mining claim, OR MC 21146, abandoned and void because no proof of labor or notice of intention to hold the claim was filed with BLM prior to December 31, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claim was located July 7, 1964. Proofs of labor for the years 1979, 1980, and 1981, were timely filed with BLM each year.

Appellant admits he mailed the 1982 proof of labor on December 31, 1982, but stated that he had undergone major surgery in December 1982, so that the last thing on his mind was the proof of labor.

The envelope containing the proof of labor bears the postmark: "Salem OR 973 31 Dec. 1982," and was received by BLM January 3, 1983.

[1] Although the regulations have been amended to permit the "timely filing" of proofs of labor mailed in envelopes bearing a clearly dated postmark affixed by the United States Postal Service before midnight December 30 and received in the proper BLM office by January 19, 1/ where the postmark affixed to appellant's envelope shows December 31, 1982, he cannot be given the benefit of the amended regulation. Accordingly, when the proof of labor was not received by BLM before December 31, 1982, and the envelope received January 3, 1983, bore a postmark of December 31, 1982, BLM had no choice under the statute but to declare the claims abandoned and void.

Appellant may wish to consult with BLM about the possibility of relocating the claim.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

1/ 43 CFR 3833.0-5(m). 47 FR 56305 (Dec. 15, 1982).

